

April 19, 2007

DECISION AND ORDER
OF THE DEPARTMENT OF ENERGY

Appeal

Name of Petitioner: William H. Payne

Date of Filing: March 23, 2007

Case Number: TFA-0198

On March 23, 2007, William H. Payne (Appellant) filed an Appeal from a determination issued by the Department of Energy's (DOE) National Nuclear Security Administration Service Center (NNSASC) in Albuquerque, New Mexico. The determination responded to a request for information filed under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the Department of Energy (DOE) in 10 C.F.R. Part 1004. If granted, NNSASC would be required to respond to the Appellant's request.^{*/}

I. Background

In an electronic mail message sent February 2, 2007, the Appellant sent a letter to NNSASC which stated:

I ask that your office sees that Sandia National Laboratories and [DOE] complies with my original FOIA/PA request and send me documents alluded to in the Gilbert letter and seen at docket entry #3 at CIV-92-1452-JC.

* * *

I ask that you send me a copy of

((9) establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, and instruct each such person with respect to such rules and the requirements of this section, including any other rules and procedures adopted pursuant to this section and the penalties for noncompliance;

^{*/}All OHA decisions may be accessed at <http://www.oha.doe.gov/foia1.asp>.

(10) establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained;

procedures 9 and 10 for Sandia National Laboratories and the [DOE].

Request dated February 2, 2007.

On February 21, 2007, NNSASC sent a letter to the Appellant. Letter dated February 21, 2007, from Carolyn Becknell, FOIA Officer, NNSASC, to William H. Payne (February 21, 2007 Letter). NNSASC first stated that it was

unable to identify what specific records you are requesting from the information that you have supplied. As to your request for a copy of the procedures relating to what you have referenced as “(9) and (10)”, [DOE] regulations, . . . , provide rules and procedures that are followed in responding to FOIA and Privacy Act requests.

February 21, 2007 Letter at 1. NNSASC then informed the Appellant that it had reviewed its records and found no pending request that he had filed. *Id.* It continued that it would take no further action at this time. *Id.*

On March 23, 2007, the Appellant appealed NNSASC’s February 21, 2007 letter, contending that the documents he is seeking are clearly identified in “Mr. Gilbert of the FBI recently declassified letter [that] has identified the documents sent to the FBI by Sandia National [L]aboratories and Mr. Goslar’s AFFIDAVIT.” March 23, 2007 Appeal Letter. The Appellant continued that he explained “this in my Wednesday February 28, 2007 10:43 email to Bucknell.” *Id.*

II. Analysis

A. Adequacy of The Appellant’s Description of Documents Requested

The Appellant asks that NNSASC comply with his original FOIA/PA request and send documents alluded to in another letter, which was not included with his February 2, 2007 request. Secondly, he asks that NNSA send him a copy of procedures (9) and (10), and appears to quote them, but he does not give a citation for them or indicate what they refer to.

We understand the position NNSASC expressed in its February 21, 2007 response to be that it was unable to identify what specific records the Appellant is requesting from the information that he supplied. For example, NNSASC had no idea what the Appellant meant by “original FOIA/PA request.” The Appellant has made numerous FOIA requests to NNSASC over many years. None of them is currently pending, so the Appellant could have been referring to any of his earlier requests, or none of them. In addition, it is not clear what the Appellant is requesting by asking for a copy of “(9) and (10).” Even a request for a broad scope of documents must be clear enough for the agency to determine what documents are being requested. *Yeager v. DEA*, 678 F.2d 315, 322, 326 (D.C. Cir. 1982) (holding valid request encompassing over 1,000,000 computerized records: “The linchpin inquiry is whether the agency is able to determine ‘precisely what records [are] being requested.’” (quoting S. Rep. No. 854, 93d Cong., 2d Sess. 12 (1974))).

Nevertheless, DOE regulations require that the

[r]equest must be in writing and for reasonably described records. A request for access to records must be submitted in writing and must reasonably describe the records requested to enable DOE personnel to locate them with a reasonable amount of effort. Where possible, specific information regarding dates, titles, file designations, and other information which may help identify the records should be supplied by the requester.

10 C.F.R. § 1004.4(b). As it is currently stated, the Appellant’s request does not reasonably describe the records he is requesting. He did not provide specific information regarding dates, titles, and other information so that NNSASC might identify the information he was requesting. He provided nothing but the statement that he was requesting what was in his original request or “copies of (9) and (10).” NNSASC cannot be expected to know what the Appellant wanted or to search through past requests to try to determine which, if any, he intended by referring to his “original request.” Further, it should not be required to do the research necessary to determine the identify of the document named at “docket entry #3 at CIV-92-1452-JC.” The Appellant must also clearly identify “(9) and (10).”

B. NNSASC’s Response

DOE Regulations require an office assist a requester in restating a request that it does not understand.

Assistance in reformulating a non-conforming request. If a request does not reasonably describe the records sought, as specified in paragraph (c)(1) of this section, the DOE response will specify the reasons why the request failed to meet the requirements of paragraph (c)(1) of this section, and will invite the requester to confer with knowledgeable DOE personnel in an attempt to restate the request or reduce the request to manageable proportions by

reformulation or by agreeing on an orderly procedure for the production of the records.

10 C.F.R. §1004.4(c)(2). NNSASC did not contact the Appellant to have him explain his request. Thus, on remand, NNSASC should offer the Appellant the opportunity to clarify what documents he is requesting. We have reached this conclusion previously in a similar situation. *Barbara Schwarz*, 27 DOE ¶ 80,245 (December 2, 1999) (Case No. VFA-0536) (<http://www.oha.doe.gov/cases/foia/vfa0536.htm>).

III. Conclusion

For the reasons explained above, we will remand this matter to NNSASC to contact the Appellant for a further explanation of what he is requesting. Therefore, we will grant the Appellant's Appeal in part.

It Is Therefore Ordered That:

- (1) The Appeal filed by William H. Payne, Case No. TFA-0198, is granted as set forth in paragraph (2) below, and is in all other respects denied.
- (2) This matter is hereby remanded to the National Nuclear Security Administration Service Center for further proceedings in accordance with the instructions set forth in this Decision and Order.
- (3) This is a final order of the Department of Energy from which any aggrieved party may seek judicial review. Judicial review may be sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

William M. Schwartz
Senior FOIA Official
Office of Hearings and Appeals

Date: April 19, 2007